United States Department of Labor Employees' Compensation Appeals Board

CH A N)	
S.H., Appellant)	
and)	Docket No. 11-1716 Issued: February 21, 2012
DEPARTMENT OF VETERANS AFFAIRS,)	
VETERANS HEALTH ADMINISTRATION,)	
Nashville, TN, Employer)	
Appearances:		Case Submitted on the Record
Appellant, pro se		
Office of Solicitor, for the Director		

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge MICHAEL E. GROOM, Alternate Judge JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 21, 2011 appellant filed a timely appeal from a July 13, 2011 Office of Workers' Compensation Programs' (OWCP) decision which denied her request for an oral hearing. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review this issue. Because more than one year elapsed from the most recent merit decision of October 16, 2008 to the filing of this appeal, the Board lacks jurisdiction to review the merits of this case.²

<u>ISSUE</u>

The issue is whether OWCP properly denied appellant's request for an oral hearing on the basis that she previously requested reconsideration.

¹ 5 U.S.C. § 8101 et seq.

² For final adverse OWCP decisions issued prior to November 19, 2008, a claimant had up to one year to appeal to the Board. See 20 C.F.R. § 501.3(d)(2) (2007). For final adverse OWCP decisions issued on or after November 19, 2008, a claimant has 180 days to file an appeal with the Board. See 20 C.F.R. § 501.3(e).

On appeal, appellant argues the merits of her case.

FACTUAL HISTORY

On January 27, 2006 appellant, then a 49-year-old program support assistant, filed a traumatic injury claim, Form CA-1, alleging that she sustained a neck, right shoulder and arm injury while in the performance of duty on December 30, 2005. Her claim was accepted for right rotator cuff sprain/strain and bilateral rotator cuff syndrome. Appellant was placed on the periodic rolls.

On December 6, 2007 appellant filed a claim for a schedule award.

By decision dated January 9, 2008, OWCP granted appellant's schedule award claim for three percent permanent disability of the right upper extremity for the period October 30, 2007 to January 3, 2008.

On January 17, 2008 appellant requested reconsideration.

By decision dated February 21, 2008, OWCP denied modification of its January 9, 2008 schedule award decision.

On July 10, 2008 appellant filed a claim for an additional schedule award.

By decision dated October 16, 2008, OWCP denied appellant's claim for an additional schedule award.

On November 18, 2008 appellant requested reconsideration for a second time.

By decision dated January 7, 2009, OWCP denied appellant's request for reconsideration on the basis that she did not show that it erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP or submit relevant and pertinent new evidence not previously considered by it.

By appeal form dated June 22, 2011, postmarked June 23, 2011 and received by OWCP on June 27, 2011, appellant requested an oral telephone hearing before an OWCP hearing representative in connection with her claim.

By decision dated July 13, 2011, OWCP denied appellant's request for a hearing on the grounds that she had previously requested reconsideration. It exercised its discretion and further denied her request on the basis that the issue in the case could equally be addressed by requesting reconsideration from OWCP and submitting evidence not previously considered which established that her permanent disability was greater than the amount awarded.

LEGAL PRECEDENT

Section 8124(b)(1) of FECA provides that a claimant for compensation not satisfied with a decision of the Secretary is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his or her claim before a representative of the

Secretary.³ OWCP's procedures, which require OWCP to exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration, are a proper interpretation of FECA and Board precedent.⁴ In such a case, it will determine whether a discretionary hearing should be granted and, if not, will so advise the claimant with reasons.⁵

ANALYSIS

On June 22, 2011 appellant requested an oral hearing. Because she previously sought reconsideration under section 8128 of FECA, she was not entitled to a hearing as a matter of right under section 8124(b)(1). Appellant previously requested reconsideration on January 17 and November 18, 2008. OWCP denied modification in a merit decision dated February 21, 2008 and denied her request for reconsideration in a nonmerit decision dated January 7, 2009.

OWCP properly exercised its discretion and determined that the issues in the case could be equally raised through a request for reconsideration and the submission of additional evidence. An abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deductions from established facts.⁶ The Board finds that OWCP properly considered the matter in relation to the issues involved. It did not abuse its discretion in denying appellant's request for an oral hearing in its July 13, 2011 decision.⁷

On appeal, appellant argues the merits of her case. The Board only has jurisdiction over the July 13, 2011 decision which denied her request for a hearing and is precluded from conducting a merit review.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for an oral hearing as she previously requested reconsideration.

³ 5 U.S.C. § 8124(b)(1).

⁴ See Claudio Vasquez, 52 ECAB 496 (2002).

⁵ See James Smith, 53 ECAB 188 (2001).

⁶ See Samuel R. Johnson, 51 ECAB 612 (2000).

⁷ See also T.T., Docket No. 10-1640 (issued March 18, 2011).

ORDER

IT IS HEREBY ORDERED THAT the July 13, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 21, 2012 Washington, DC

Colleen Duffy Kiko, Judge Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge Employees' Compensation Appeals Board